

THE HONORABLE BENJAMIN H. SETTLE

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

Plaintiff,

and

MELISSA DANIEL,

Plaintiff-Intervenor

v.

NORTHWEST WIRELESS ENTERPRISES,
LLC,

Defendant, *et al.*

NO. 3:19-cv-05696-BHS-MLP

CONSENT DECREE

I. INTRODUCTION

1. Plaintiff U.S. Equal Employment Opportunity Commission (“EEOC”) filed this lawsuit on July 31, 2019 pursuant to Section 107(b) of the American with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12117(a), which incorporates by reference Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(f)(1) and (3) (“Title VII”), and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981(a). (ECF No. 1). The Complaint alleges that Defendant Northwest Wireless Enterprises,

1 LLC ("NWE") discriminated against Ms. Daniel, a qualified individual with a disability,
2 when it terminated her from her sales associate position on June 29, 2018. The EEOC sought
3 monetary and non-monetary relief for Ms. Daniel. NWE filed an Amended Answer on
4 October 4, 2019 denying the claims in the Complaint. (ECF No. 14).

5 2. EEOC and NWE ("Parties") want to conclude fully and finally all claims arising
6 out of the EEOC's Complaint and Ms. Daniel's charge of discrimination filed with EEOC. The
7 EEOC and NWE enter into this Consent Decree to further the objectives of equal
8 employment opportunity in the ADA.
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10 II. JURISDICTION AND VENUE

11 3. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343
12 and 1345. This action is authorized and instituted pursuant to Section 107(b) of the ADA, 42
13 U.S.C. § 12117(a), which incorporates by reference Section 706(f)(1) and (3) of Title VII of
14 the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(f)(1) and (3) ("Title VII"), and pursuant to
15 Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981(a).

16 4. The employment practices alleged to be unlawful were committed within the
17 jurisdiction of the United States District Court for the Western District of Washington.

18 III. SETTLEMENT SCOPE

19 5. This Consent Decree is the final and complete resolution of all allegations of
20 unlawful employment practices contained in Ms. Daniel's EEOC charge, in the EEOC's
21 administrative determination, and in the EEOC's Complaint filed herein, including all claims
22 by the EEOC and NWE for attorney fees and costs.
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1 6. No waiver, modification or amendment of any provision of this Consent Decree
2 shall be effective unless made in writing and approved by the Parties to this Decree, and any
3 substantive change, modification or amendment of any provision of this Consent Decree shall
4 also require approval by the Court.

5 IV. MONETARY RELIEF

6 7. In settlement of this lawsuit, NWE shall pay Ms. Daniel the total amount of
7 One-Hundred-Seventy-Five-Thousand Dollars (\$175,000.00) by delivering the following to
8 Beverly Grant Law Firm, P.S., Ms. Daniel's private legal counsel, 5800 100th Street SW, Suite
9 A, Lakewood, WA, 98499, by certified mail with proof of delivery:
10

11 a. A check in the amount of Twelve-Thousand Dollars (\$12,000) made payable
12 to Ms. Daniel within ten (10) days of the date of entry of this Consent Decree which
13 constitutes back pay. The check shall be reduced by any applicable deductions for the
14 employee's portion of FICA and applicable federal and applicable state income tax
15 withholdings related to the payment of wages. NWE shall pay the employer's portion
16 of FICA. NWE shall include a statement of payments and deductions. NWE will issue
17 Ms. Daniel an IRS Form W2 for this payment;

18 b. A check in the amount of Seventy-Five-Thousand-Five-Hundred Dollars
19 (\$75,500) within ten (10) days of the date of entry of this Consent Decree as non-wage
20 damages payable to Beverly Grant Law Firm, P.S. with a notation in the memo line that
21 the check is in Trust for Ms. Daniel. NWE will issue an appropriate IRS form 1099 for
22 this payment;
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c. A separate check in the amount of Eighty-Seven-Thousand-Five-Hundred Dollars (\$87,500) within sixty (60) days of the date of entry of this Consent Decree as non-wage damages payable to Beverly Grant Law Firm, P.S. with a notation in the memo line that the check is in Trust for Ms. Daniel. NWE will issue an appropriate IRS form 1099 for this payment; and

d. NWE shall transmit a copy of any checks made payable to Ms. Daniel or Beverly Grant Law Firm, P.S. (in Trust for Ms. Daniel), together with an accounting of employee deductions and employer contributions made, to the EEOC at the same time that payment is made to Ms. Daniel as described above at:

EEOC-SEFO_COMPLIANCE@eoc.gov
SEFO_NWE@eoc.gov

8. NWE will not condition the receipt of monetary relief by requiring Ms. Daniel to: (a) maintain as confidential the facts and/or allegations underlying her charge, the EEOC's Complaint and the terms of this Decree; (b) waive her statutory right to file a future charge with any government agency; (c) agree to a non-disparagement and/or confidentiality agreement; (d) refrain from reapplying for a job with NWE; or (e) release any claims beyond the ADA claims at issue in this action and which this Consent Decree resolves.

V. INJUNCTIVE AND OTHER RELIEF

A. General Provisions

9. NWE, its owners, officers, agents, managers, supervisors, and human resource staff, and its successors and assigns, are enjoined from engaging in practices which unlawfully discriminate under the ADA which includes terminating any employee based on a physical or mental disability.

1 10. NWE will provide prior written notice to any potential purchaser of its
2 businesses, or a purchaser of all or a portion of NWE's assets, and to any other potential
3 successor, of the EEOC's lawsuit, the allegations raised in the EEOC's Complaint, and the
4 existence and contents of this Consent Decree.

5 11. In recognition of its obligations under the ADA, NWE shall institute the policies
6 and practices set forth below.

7 B. Anti-Discrimination Policies and Procedures and Consultant
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9 12. Within thirty (30) days of entry of this Consent Decree (Effective Date), NWE
10 shall retain the Center for Continuing Education and Rehabilitation at the Northwest ADA
11 Center operated by University of Washington as an independent consultant (Consultant) to
12 assist with ADA policies, procedures and training. For the duration of the Decree, the
13 Consultant's responsibilities shall include:

14 a. Assisting NWE in the review, development and/or revision and dissemination
15 of new and/or revised policies, practices and training consistent with the requirements of this
16 Consent Decree and compliance with the ADA;

17 b. Ensuring that all NWE owners, officers, managers, supervisory, and human
18 resources employees, are trained on their rights and responsibilities under the ADA and this
19 Decree, including the responsibility to provide employees a workplace free of a discrimination;
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21 c. Investigating, monitoring and tracking all investigations of any verbal or written
22 reports or complaints of discrimination by an employee of NWE and the resolution of each
23 report or complaint to ensure compliance with the ADA and this Decree;
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1 d. Ensuring that N WWE accurately complies with all deadlines and timely submits
2 all reports required by this Decree.

3 13. EEO Policies and Procedures. N WWE shall ensure, with the assistance of its
4 Consultant, that it has written policies and procedures that: (a) prohibit disability
5 discrimination; (b) explain to managers, supervisors and employees their rights and
6 responsibilities under the ADA; (c) describe the process by which an employee can file an
7 internal complaint based on disability, and how N WWE will investigate, maintain a record of
8 such a complaint investigation, and resolve such a complaint, as described below; (d) prohibit
9 retaliation against any individual who files an internal disability complaint or who provides
10 evidence during N WWE's investigation of such an internal complaint; and (e) periodically
11 update these policies and procedures to reflect changes in anti-discrimination laws. The
12 policies and procedures will state that that they are promulgated at the direction of and with
13 the endorsement by the highest level of N WWE ownership and management. These policies
14 and procedures shall be provided to the EEOC for review and comment no later than thirty
15 (30) days prior to implementation. Within fifteen (15) days of receipt, the EEOC will advise
16 N WWE of any comments. EEOC agrees to review the proposed policies and procedures in
17 good faith.
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19 14. N WWE's anti-discrimination policy will describe the process by which a N WWE
20 employee can request a reasonable accommodation under the ADA, what factors will be
21 considered in approving or denying the requested accommodation, the type of information that
22 an employee must submit to support his/her requested accommodation and the time frame for
23 approval or denial.
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1 15. NWE shall develop and implement a procedure, with the assistance of its
2 Consultant, by which an employee who believes she has been discriminated against based on
3 disability, can file an internal complaint, a procedure that includes: (a) multiple points of
4 contact through which an employee can file a complaint, including phone numbers, addresses
5 and email addresses for those points of contact, including NWE's human resources; (b)
6 allowing complaints to be submitted anonymously or verbally in the primary language of the
7 employee, without requiring the employee to submit a written statement; (c) providing a
8 location or office where an employee may lodge a complaint in private and away from the
9 presence of the alleged discriminating manager, supervisor or employee; (d) providing a
10 method for documenting verbal complaints; (e) ensuring the confidentiality of an employee
11 who files such an internal complainant, and that of any other victim or witness to the complaint;
12 (f) providing that NWE will begin the investigation within five (5) business days of receipt
13 of a complaint and complete the investigation within fifteen (15) business days; (g) ensuring
14 that NWE will take prompt and appropriate action to correct the conduct upon determining
15 that discrimination has occurred; and (h) ensuring that NWE will communicate to the
16 employee who files an internal complaint whether the complaint was substantiated and if any
17 action was taken within five (5) business days of completing the investigation of a complaint.
18 The procedure will also include a prescribed method for documenting all complaints to include
19 all documents obtained or submitted during the complaint process.
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21 16. Not later than ninety (90) days after entry of this Consent Decree, NWE shall
22 distribute a written copy of its EEO policies to all employees, both management and non-
23 management. NWE will confirm that it distributed its written EEO policies to all employees
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1 within ninety (90) days of entry of this Decree. The EEO policies will also be distributed to
2 every employee hired or re-hired within thirty (30) days during the duration of this Decree.

3 17. Policy Modifications. In the event that NWE modifies any of the policies
4 identified in paragraphs 12 through 16 above during the duration of the Decree, NWE shall
5 submit to the EEOC for its review and consideration the proposed modifications no later than
6 thirty (30) days before adoption. EEOC will notify NWE within fifteen (15) days of receipt
7 of the proposed modifications if it has any comments. EEOC agrees to review the proposed
8 modifications in good faith.
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10 C. Equal Employment Opportunity Training

11 18. During the pendency of this Consent Decree, NWE shall provide at least two
12 (2) hours of annual EEO training to owners, managers and supervisors, and for all human
13 resources/employee relations staff who provide advice and support on ADA issues to owners,
14 managers and supervisors. This anti-discrimination training shall be developed and
15 administered with the assistance of its Consultant and will include, at a minimum: (a) an
16 overview of the ADA with special emphasis on employee rights and responsibilities in
17 requesting a reasonable accommodation; (b) employer obligations in responding to requests
18 for reasonable accommodation; (c) the interactive process; (d) the employer's ongoing
19 obligation to ensure the effectiveness of reasonable accommodations; and (e) the prohibition
20 of taking an adverse action against any employee based on physical or mental disability or for
21 requesting an accommodation. NWE shall ensure that the format of the training is in-person
22 or by virtual platform and interactive. After the initial training required by this Decree, NWE
23 will provide this training to individuals hired or promoted to manager, supervisor or human
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1 resources within thirty (30) days of each individual's hiring or promotion. Training materials
2 and background information about the provider for the first year of this Consent Decree must
3 be submitted to the EEOC no later than ninety (90) days of the date of entry of this Consent
4 Decree to allow the EEOC the opportunity to comment on the training, and for N WWE to
5 revise the training materials accordingly. For each year of the Consent Decree thereafter,
6 N WWE will submit training materials and background information about the provider to the
7 EEOC at least thirty (30) days prior to the training session to allow the EEOC the opportunity
8 to comment on the training, and for N WWE to revise the training materials accordingly.
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10 19. During the pendency of this Consent Decree, N WWE shall provide at least one (1)
11 hour of annual EEO training to employees on their rights and responsibilities under the ADA.
12 This anti-discrimination training shall be developed and administered with the assistance of its
13 Consultant and will include: (a) an overview of the ADA with special emphasis on employee
14 rights and responsibilities in requesting a reasonable accommodation; (b) employer obligations
15 in responding to requests for reasonable accommodation; (c) the interactive process; (d) the
16 employer's ongoing obligation to ensure the effectiveness of reasonable accommodations; and
17 (e) the prohibition of taking an adverse action against any employee based on physical or
18 mental disability or for requesting an accommodation. N WWE shall ensure that the format of
19 the training is in-person or by virtual platform and interactive. After the initial training required
20 by this Decree, N WWE will provide this training to any individual within thirty (30) days of
21 each individual's hiring. Training materials and background information about the provider for
22 the first year of this Consent Decree must be submitted to the EEOC no later than ninety (90)
23 days of the date of entry of this Consent Decree to allow the EEOC the opportunity to comment
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1 on the training, and for NWE to revise the training materials accordingly. For each year of
 2 the Consent Decree thereafter, NWE will submit training materials and background
 3 information about the provider to the EEOC at least thirty (30) days prior to the training session
 4 to allow the EEOC the opportunity to comment on the training, and for NWE to revise the
 5 training materials accordingly.

6 20. After incorporating revisions to resolve any concerns raised by the EEOC to the
 7 foregoing training sessions, NWE shall provide the EEO training noted in Paragraphs 18-19
 8 for the first year of this Consent Decree no later than one-hundred-twenty (120) days after
 9 entry of this Consent Decree.

10 21. All costs of training shall be borne by NWE. For the duration of this Consent
 11 Decree, NWE shall notify the EEOC in writing of the completion of the training seminars
 12 and shall specify the names and job titles of the managers, supervisors and employees who
 13 participated in and completed the training. This information shall be provided as part of the
 14 annual report NWE submits to the EEOC.

15 D. Non-Disclosure of Information, File Expungement; Neutral Reference; and Apology.

16 22. NWE shall not disclose any information or make reference to any charge of
 17 discrimination or this lawsuit in responding to requests for information about Ms. Daniel.
 18 NWE shall seal from its personnel files and any other records any information relating to
 19 Ms. Daniel's request for an accommodation, NWE's response to her requested
 20 accommodation and her June 29, 2018 termination. NWE shall provide a neutral job
 21 reference regarding Ms. Daniel, consistent with NWE's usual practices, providing only dates
 22 of employment, job title and/or job description, and rate of pay for Ms. Daniel during her
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1 employment at N WWE. Not later than ninety (90) days after entry of this Consent Decree,
2 N WWE shall provide a written apology letter to Ms. Daniel, signed by Michael Wallitner as
3 CEO of N WWE.

4 E. Policies Designed to Promote Accountability.

5 23. Not later than ninety (90) days after entry of this Consent Decree, N WWE shall
6 develop and adopt performance policies and standards, with the assistance of its Consultant,
7 that expressly evaluate all management personnel and supervisors, and all human
8 resources/employee relations staff who provide advice and support to owners, managers,
9 supervisors and employees, on their compliance with N WWE's EEO policies and for ensuring
10 employees are not discriminated against based on disability. N WWE shall impose discipline,
11 up to and including termination of employment, upon any manager or supervisor, and any
12 human resources/employee relations staff who provided advice to such manager or supervisor,
13 who they determine has discriminated against an employee based on disability. In addition,
14 N WWE's performance policies and standards shall inform managers and supervisors of their
15 obligation to report any complaint based on disability for investigation, prevent and correct
16 any discrimination that they observe in the workplace or after receiving notice of
17 discrimination, and warn that failure to take such action will result in disciplinary action.
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19 24. In conducting performance reviews, N WWE shall hold each manager, and
20 supervisor accountable for EEO enforcement and compliance.

21 F. Reporting.

22 25. N WWE shall report to the EEOC for the duration of this Consent Decree. The first
23 report shall be submitted twelve (12) months after the entry of this Consent Decree, the second
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1 report shall be submitted twenty (24) months after the entry of this Consent Decree, and the
 2 final report shall be submitted thirty (30) days before the end of the Consent Decree monitoring
 3 period. The report, and any other information required in this Consent Decree, shall be in
 4 writing and submitted to: EEOC-SEFO_COMPLIANCE@eeoc.gov and
 5 SEFO_NWWE@eeoc.gov. The reporting period will run from the date of the entry of this
 6 Consent Decree.

7 26. These reports shall contain the following information and attachments:

8 a. Certification that NWWE has:

- 9 1. Revised and maintained its written EEO policies and procedures and
 10 annually distributed copies of its EEO policy as described in
 11 Paragraphs 12- 17;
- 12 2. Complied with the training provisions enumerated in this Consent
 Decree in Paragraphs 18-21;
- 13 3. Continued to enforce policies and procedures to promote EEO
 14 accountability by managers and supervisors, as required by
 Paragraphs 23-24; and
- 15 4. Complied with all other provisions of this Consent Decree.

16 b. Copies of the following documents shall be included with each annual report
 submitted to the Seattle Filed Office of the EEOC:

- 17 1. A copy of NWWE's EEO policy and procedures developed and
 18 implemented in accordance with the provisions of this Consent
 Decree;
- 19 2. A summary of formal or informal discrimination complaints that
 20 allege disability discrimination, including failure to provide
 21 reasonable accommodation, if any, filed by any individual. The
 summary shall include the following information:
 - 22 i. Name, full address, email address, and telephone numbers of
 the complaining individual;
 - 23 ii. A report of the resolution of each complaint, including the
 24 identification of the individuals involved, their titles, the
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1 particulars of the complaint, a summary of the investigation,
2 the company's determination, and any corrective action taken.

3 iii. Name(s) and title of individual(s) who received,
4 investigated, and or otherwise addressed and took action based
5 on the complaint.

- 6 3. A sign-in sheet or list of the names and job titles of each manager,
7 supervisor and employee of N WWE's who completed EEO
8 training and the dates the training was conducted during the
9 previous reporting period.

10 27. If applicable, N WWE shall submit a statement with its report to the EEOC
11 specifying the areas of noncompliance, the reason for the noncompliance, and the steps that
12 were or shall be taken to bring the Company into compliance.

13 G. Posting

14 28. N WWE shall post a Notice to All Employees. This Notice is attached as Exhibit
15 1 to this Consent Decree. The Notice shall be posted on a centrally located bulletin board at
16 each of N WWE's facilities.

17 VI. ENFORCEMENT

18 29. If the EEOC determines that N WWE has not complied with the terms of this
19 Consent Decree, the EEOC shall provide written notification of the alleged breach to N WWE.
20 The EEOC shall not petition the Court for enforcement of this Consent Decree for at least
21 twenty (20) days after providing written notification of the alleged breach. The 20-day period
22 following the written notice shall be used by the EEOC and N WWE for opportunity to cure
23 and good faith efforts to resolve the dispute.

24 VII. RETENTION OF JURISDICTION

25 30. The United States District Court for the Western District of Washington at Tacoma
shall retain jurisdiction over this matter for the duration of this Consent Decree.

VIII. DURATION AND TERMINATION

31. This Consent Decree shall be in effect for thirty (30) months from the date of entry of the Decree. If the EEOC petitions the Court for breach of this Consent Decree, and the Court finds NWE to be in violation of the terms of the Consent Decree, the Court may extend the duration of this Consent Decree.

Respectfully submitted this 26th day of October, 2020.

BY: /s/ Roberta L. Steele

ROBERTA L. STEELE
Regional Attorney

SHARON FAST GUSTAFSON
General Counsel

JOHN F. STANLEY
Supervisory Trial Attorney

ROBERT A. CANINO
Acting Deputy General Counsel

DAMIEN LEE
Senior Trial Attorney

GWENDOLYN Y. REAMS
Associate General Counsel

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
Seattle Field Office
909 First Ave., Suite 400
Seattle, WA 98104-1061

Office of the General Counsel
131 "M" Street NE
Washington, D.C. 20507

Attorneys for Plaintiff EEOC

BY: /s/Matthew A. Lind

SHERRARD McGONAGLE TIZZANO LIND, P.S.
Matthew A. Lind, WSBA No. 37179
19717 Front Street NE
P.O. Box 400
Poulsbo, WA 98370
Ph 360-779-5551 / Fax 360-779-1229
Email: matt@westsoundlegal.com

BY: /s/James K. McCanna
McCANNA LAW, PLLC

1 James K. McCanna, WSBA No. 22565
2 P.O. Box 468
3 Kingston, WA 98346
4 Ph 360-297-4057 / Fax 360-297-4157
5 Email: jmccanna@mccannalaw.com

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Attorneys for Defendant Northwest Wireless Enterprises, LLC

ORDER APPROVING CONSENT DECREE

The Court, having considered the foregoing Proposed Consent Decree of the Parties, HEREBY ORDERS THAT the Consent Decree be, and the same hereby is, approved as the final decree of this Court in full settlement of this action. This lawsuit is hereby dismissed with prejudice and without costs or attorneys' fees. The Court retains jurisdiction of this matter for purposes of enforcing the Consent Decree approved herein.

DATED this 27th day of October, 2020.



BENJAMIN H. SETTLE
United States District Judge